

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 18-00290-7 WHA

Plaintiff,

v.

**ORDER RE MOTION  
TO SUPPRESS**

ARMANDO DANIEL CALDERON,

Defendant.

**INTRODUCTION**

In this prosecution for drug distribution and possession of a firearm, defendant moves to suppress the fruits of a warrantless search of his vehicle. For the reasons stated below, defendant's motion is **DENIED**.

**STATEMENT**

Around 5:00 p.m. on September 11, 2018, Deputy Scott Benitez of the San Mateo County Sheriff's Department saw defendant Armando Calderon leaving his Jeep, which was parked in the lot of the triplex in which his grandmother lived. Deputy Benitez told defendant he'd seen the Jeep pass several vehicles without using a turn signal in violation of the California Vehicle Code. Deputy Benitez then asked defendant for his license and proof of registration. After conversing, defendant told Deputy Benitez they were on private property, then ran towards the triplex, and into the carport area yelling, "Grandma! Help!" Defendant then slammed a door in the carport area, ran behind the building, and jumped over a fence.

1 Deputy Benitez conducted an area check in an attempt to find defendant, then requested  
2 Deputy Rick Chaput to come to the scene with a narcotics-detection canine. The canine sniffed  
3 the Jeep's exterior and indicated the presence of narcotics, whereupon Deputy Benitez searched  
4 the interior and found drug paraphernalia, a shoulder bag with a pistol, and defendant's  
5 identification information. During this time, other deputies from the San Mateo County  
6 Sheriff's Department spoke to defendant's grandmother, who signed a form consenting to a  
7 search of where defendant kept his things in the triplex.

8 In October 2018, the government filed a first superseding indictment charging defendant  
9 with conspiracy to distribute and possession with intent to distribute 500 grams or more of a  
10 mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 846, possession  
11 with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§  
12 841(a)(1) and (b)(1)(A), possession with intent to distribute 500 grams or more of a mixture or  
13 substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A),  
14 and carrying and possession of a firearm in furtherance of a drug trafficking crime, in violation  
15 of 18 U.S.C. § 924(c) (Dkt. No. 30).

16 In June 2019, defendant filed the instant motion to suppress the evidence seized from the  
17 Jeep parked outside of the triplex. This order follows oral argument and full briefing (Dkt. Nos.  
18 173).

### 19 ANALYSIS

20 The Fourth Amendment's prohibition on unreasonable search and seizures protects the  
21 legitimate expectation of privacy of an individual's home, including its curtilage. A home's  
22 curtilage is the area immediately surrounding and associated with the home." *Florida v.*  
23 *Jardines*, 569 US 1, 6 (2013). To determine if an area is considered curtilage, we look at a  
24 number of factors, including but not limited to: (1) the proximity of the area claimed to be  
25 curtilage to the home, (2) whether the area is included within an enclosure surrounding the  
26 home, (3) the nature of the uses to which the area is put, and (4) the steps taken by the resident  
27 to protect the area from observation by people passing by. *United States v. Dunn*, 480 U.S. 294,  
28 301 (1987). Furthermore, what might be one person's curtilage, in the context of a private

1 single occupancy residence, becomes less subject to privacy expectations in the context of the  
2 grounds of a multi-unit apartment complex. Defendant argues that he parked his Jeep in the lot  
3 of the triplex where his grandmother lived, which is in the property's curtilage (shown in the  
4 photograph below), and that he accordingly had a legitimate expectation of privacy there when  
5 the deputies searched it without a warrant.



16  
17 With regards to the *Dunn* factors, *first*, the parties agree that the parking area in question  
18 is next to the triplex. The proximity of the area to the triplex thus weighs in favor of finding  
19 curtilage.

20 *Second*, the parties also agree that a chain-link fence separates the triplex and parking  
21 area from the property next door. Regardless of whether a property is visible to the street,  
22 fencing is generally viewed as a means to demarcate the boundaries of a property. *Dunn*, 480  
23 U.S. 302; *see also Oliver v. United States*, 466 U.S. 170, 182 (1984). Here, the fence encloses  
24 both the area in question and defendant's grandmother's unit and the other two units in the  
25 triplex. Accordingly, this factor also weighs in favor of finding curtilage.

26 *Third*, the parties agree that the primary use of the area is for parking cars. Defendant,  
27 nonetheless, argues there is an outdoor grill stored along the wall of the triplex to support the  
28 contention the area in question is a place in "which the activity of the home life extends."

1 *Jardines*, 569 U.S. at 7. Defendant further contends that a June 2019 photo showed a washer  
2 dryer-unit as well (see photograph below).



3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13 The grill, however, is shown to be stored in the carport, not an area open to the sky, and it is  
14 unclear if the washer-dryer unit was even present during the search. These devices have little to  
15 no bearing on the curtilage analysis here.

16 In any event, even if these devices were present and placed in the area where defendant  
17 left his car, this factor would still weigh against finding curtilage. Our court of appeals has not  
18 explicitly held whether the presence of a grill or washer-dryer unit matter. It has, however,  
19 found that shared or common usage areas are not areas where individual tenants have a  
20 reasonable expectation of privacy. *United States v. Nohara*, 3 F.3d 1239, 1242 (9th Cir.1993).  
21 Thus, even if the grill and washer dryer unit were present at the time of the search and located  
22 outside of the carport, the fact that the Jeep was parked on the common driveway lessens any  
23 expectation of privacy, and weighs against finding curtilage.

24 *Fourth*, the parties also agree that the area is open to public viewing. This weighs  
25 against finding curtilage. On balance, the *Dunn* factors appear about equal.

26 This order finds against curtilage because the building in question is a triplex and the  
27 driveway was a common area open to the sky and public. *United States v. Fluker* held a greater  
28 right to privacy in a hallway between two apartments of a duplex, finding “significant the fact


1 that the door to the hallway giving access to the two apartments was locked; the two-lower level  
2 tenants thus exercised considerably more control over access to that portion of the building than  
3 would be true in a multi-unit complex.” 543 F.2d 709, 716 (9th Cir. 1976). Here, the home was  
4 a triplex and the Jeep was searched in an outdoor parking area open to the sky, not a locked  
5 internal hallway. Defendant had no reasonable expectation of home privacy in that location.

6 **CONCLUSION**

7 For the reasons stated, defendant’s motion to suppress is **DENIED**.

8  
9 **IT IS SO ORDERED.**

10 Dated: August 9, 2019.

11   
12 \_\_\_\_\_  
13 WILLIAM ALSUP  
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28